

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TRACBEAM, L.L.C., A COLORADO LIMITED
LIABILITY COMPANY,

PLAINTIFF,

V.

AT&T, INC., A DELAWARE CORPORATION;
AT&T MOBILITY L.L.C., A DELAWARE
LIMITED COMPANY; METROPCS
COMMUNICATIONS, INC., A DELAWARE
CORPORATION; METROPCS WIRELESS, INC.,
A DELAWARE CORPORATION; TEXAS RSA 7B3,
L.P. D/B/A PEOPLES WIRELESS SERVICES, A
TEXAS CORPORATION; SPRINT NEXTEL
CORPORATION, A KANSAS CORPORATION;
SPRINT SPECTRUM L.P., A DELAWARE
LIMITED PARTNERSHIP; NEXTEL OF
CALIFORNIA, INC., A DELAWARE CORPORATION;
NEXTEL COMMUNICATION OF THE MID-
ATLANTIC, INC., A DELAWARE CORPORATION;
NEXTEL OF NEW YORK, INC., A DELAWARE
CORPORATION; NEXTEL SOUTH CORP., A
GEORGIA CORPORATION; NEXTEL OF TEXAS,
INC., A TEXAS CORPORATION; NEXTEL WEST
CORP., A DELAWARE CORPORATION; AND
CELLCO PARTNERSHIP D/B/A VERIZON
WIRELESS, A DELAWARE PARTNERSHIP,

DEFENDANTS.

CASE No. 6:11-cv-96

ANSWER OF PEOPLES WIRELESS SERVICES TO TRACBEAM,
L.L.C.'s FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

To the extent any response is required to the unnumbered preamble of the First Amended
Complaint for Patent Infringement ("Complaint"): Denied.

TEXAS RSA 7B3, L.P. D/B/A PEOPLES WIRELESS SERVICES, a Texas corporation (“Peoples”) hereby responds to the numbered paragraphs of the Complaint with the following corresponding paragraphs.

INTRODUCTION

1. To the extent any response is required: Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments, except that Plaintiff has alleged an action for patent infringement.

PARTIES

2. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

3. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

4. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

5. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

6. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

7. Admitted.

8. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

9. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

10. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

11. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

12. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

13. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

14. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

15. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

16. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

17. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

18. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

19. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

20. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

21. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

22. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

23. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

24. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

25. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

26. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

27. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

28. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

29. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

30. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

31. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

32. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

33. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

34. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

35. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

36. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

37. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

38. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

39. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

40. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

41. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

42. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

43. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

44. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

45. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

46. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

47. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

48. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

49. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

50. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

51. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

52. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

53. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

54. Denied.

55. Denied.

56. Denied.

57. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

58. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

59. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

60. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

61. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

62. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

63. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

64. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

65. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

66. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

67. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

68. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

69. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

70. Denied, because Peoples is without knowledge or information sufficient to form a belief as to the truth of the averments.

RESPONSE TO DEMAND FOR JURY TRIAL

71. To the extent that any response is required to Plaintiff's demand for a jury trial: Denied.

RESPONSE TO PRAYER FOR RELIEF

72. To the extent any response is required to any paragraphs of Plaintiff's Prayer for Relief, including without limitation its unnumbered paragraph and paragraphs it has labeled A – F: Denied.

DEFENSES

73. Pursuant to Federal Rule of Civil Procedure 8(b) and (c), without assuming any burden that it would not otherwise bear, without reducing or removing Plaintiff's burdens of proof on its affirmative claims against Peoples, reserving its right to assert additional defenses and/or affirmative defenses,, and affirmatively solely to the extent deemed necessary by the Court to maintain any or all of the following defenses, Peoples asserts the following defenses and/or affirmative defenses to Plaintiff's Complaint:

First Defense

74. Peoples does not and has not infringed any valid and enforceable claim in TracBeam's United States Patent Nos. 7,764,231 entitled "Wireless Location Using Multiple Mobile Station Location Technique" (the "231 patent") and 7,525,484 entitled "Gateway and Hybrid Solutions for Wireless Location" (the "484 patent") (collectively "the Patents") literally, under the doctrine of equivalents, directly, indirectly, contributorily, by way of inducement, and/or via any other mechanism of liability.

Second Defense

75. Each of the claims of the Patents are invalid and/or unenforceable for failure to comply with one or more of the conditions for patentability set forth in Title 35 of the United States Code, including without limitation, for example, Sections 101, 103, 103 and 112.

Third Defense

76. Plaintiff's claims for patent infringement are precluded in whole or in part (i) to the extent that any allegedly infringing products or components thereof are supplied, directly or indirectly, to Peoples by any entity or entities having express or implied licenses to the Patents and/or (ii) under the doctrine of patent exhaustion.

Fourth Defense

77. Plaintiff is barred in whole or in part under principles of equity, including without limitation, laches, prosecution laches, waiver, estoppels, and/or unclean hands.

Fifth Defense

78. Any claim by Plaintiff for damages is limited under 35 U.S.C. §§ 286 or 287. Plaintiff is barred under 35 U.S.C. § 287 from recovering damages prior to the date of the filing of the Complaint. Plaintiff is barred by 35 U.S.C. § 288 from recovering costs associated with its action.

Sixth Defense

79. Plaintiff has failed to provide adequate evidence of ownership of the Patents.

Seventh Defense

80. Plaintiff lacks standing to bring suit for alleged infringement of the Patents.

Eighth Defense

81. Plaintiff is not entitled to injunctive relief under any theory, including without limitation, because any alleged injury to Plaintiff is not immediate or irreparable, Plaintiff has an adequate remedy at law, and/or public policy concerns weigh against any injunctive relief.

Ninth Defense

82. Plaintiff has failed to state a claim upon which relief can be granted.

PRAYER FOR RELIEF

WHEREFORE, Peoples respectfully requests a judgment against Plaintiff as follows:

- A. that Plaintiff take nothing by its Complaint in this action;
- B. that the Court enter judgment against Plaintiff and in favor of Peoples, and that the Complaint in this action be dismissed with prejudice;
- C. that the Court enter a declaratory judgment that Peoples does not infringe any claim of the Patents;
- D. that the Court enter a declaratory judgment that the claims of the Patents are invalid and/or void;
- E. that the Court declare this is an exceptional case under 35 U.S.C. §285 and award Peoples its costs and attorneys' fees; and
- F. that the Court award Peoples any and all other relief to which it may be entitled, or which the Court deems just and proper.

DATED: May 20, 2011.

Respectfully submitted,

MONNING & WYNNE, L.L.P.

By: /s/Bruce Monning
Bruce Monning
State Bar No. 14269500

The Cumberland Hill School Building
1901 N. Akard Street
Dallas, Texas 75201
Telephone: (214) 871-7182
Fax: (214) 871-7179
Email: bruce@monning.com

Michael C. Smith
State Bar No. 18650410
Siebman, Burg, Phillips & Smith, L.L.P.
113 East Austin
Marshall, Texas 75670
Telephone: (903) 938-8900
Fax: (972) 767-4620
Email: michaelsmith@siebman.com

ATTORNEYS FOR DEFENDANT
TEXAS RSA 7B3, L.P. D/B/A
PEOPLES WIRELESS SERVICES

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) this 20th day of May, 2011.

/s/Bruce Monning
Bruce Monning